

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

v.

NICK C. TRAN

§
§
§
§
§

CAUSE NO. 1:08CR66-LG-JMR-3

ORDER DENYING TRAN’S SECOND MOTION TO DISMISS

BEFORE THE COURT is Nick Tran’s Second Motion to Dismiss [332]. He argues that the entire criminal prosecution against him has “become so deeply tainted by governmental malfeasance and/or misfeasance so as to render the entire effort toxic and, therefore, equitably and legally unpursuable.” (Def.’s Mem. at 1). The Government has filed a response in opposition, and Tran has filed a reply. Upon reviewing the submissions of the parties and the applicable law, the Court finds that the Second Motion to Dismiss should be denied.

Discussion

A fifty-four count grand jury indictment was returned against Tran, a Biloxi pharmacist, on September 10, 2008. Following a two-week trial, the jury unanimously found that Tran was not guilty of the forty-three charges concerning the distribution of controlled substances to persons aged twenty-one or older outside the scope of professional practice. However, the jury was unable to reach a unanimous verdict as to the conspiracy charge, the premises charge, and the nine charges concerning the distribution of controlled substances outside the scope of professional practice to persons under the age of twenty-one. Tran argues that an undercover DEA agent gave false testimony at his trial, and he argues that all of the remaining charges against him should be dismissed on that ground. Tran concedes that there is no legal authority that directly supports his contention.

Nevertheless, it is not necessary for the Court to address the issue of whether false testimony that leads to a partial acquittal and a partial hung verdict justifies dismissal of all remaining charges. First, this Court finds that Tran has not demonstrated that the agent gave false testimony. Furthermore, the jury acquitted Tran of all charges related to that agent as well as all other charges that involved undercover agents. As a result, Tran was not harmed by any alleged false testimony, and those charges are no longer at issue.

IT IS THEREFORE ORDERED AND ADJUDGED that Nick Tran's Second Motion to Dismiss [332] is **DENIED**.

SO ORDERED AND ADJUDGED this the 11th day of May, 2010.

s/ *Louis Guirola, Jr.*
LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE